IN THE

Supreme Court of the United States

October Term, 1960

No. 294

THE STATE OF LOUISIANA, *ex rel.* JACK P. F. GREMILLION, Attorney General,

Appellant,

v.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,

Appellee.

WADE O. MARTIN, JR., Secretary of State, State of Louisiana, *et al.*,

Appellant,

v.

NEW ORLEANS BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,

Appellee.

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division

MOTION TO AFFIRM

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MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the question is so insubstantial as not to warrant further argument.

Statement.

This is a direct appeal from the final judgment and decree entered on February 27, 1960, by the specially constituted court of three judges below convened pursuant to

Title 28, United States Code, Sections 2281-2284, which declared Act 2, 1924, La. R. S. of 1950, 12:401-409, and Act 260, 1958, La. R. S. of 1950, 14:385-388, unconstitutional and enjoined their enforcement, insofar as the former legislation required the National Association for the Advancement of Colored People, its affiliates, officers, members, contributors, voluntary workers, or any of them to disclose the names and addresses of the members or contributors of the N.A.A.C.P., and insofar as the latter statute required, as a prerequisite for engaging in activities in Louisiana as an N.A.A.C.P. affiliate, that an affidavit be filed swearing that no officer of the national organization is a member of any organization declared subversive by the House Un-American Activities Committee or by the Attorney General of the United States.

In addition, the appellant, Attorney General, was enjoined from enforcing any penalties against the N.A.A.C.P., its affiliates, officers or members for failure to comply with these statutes.

These proceedings commenced as follows: On March 1, 1956, the State of Louisiana instituted proceedings in the 19th Judicial District Court of East Baton Rouge, Louisiana, seeking to enjoin the N.A.A.C.P. from doing business in Louisiana because of its failure to comply with Act 2, 1924, La. R. S. 1950, 12:401-409, which required that membership corporations file annually with the Secretary of State a list of their members and officers.

On March 28, 1956, a petition for removal was filed in the United States District Court for the Eastern District of Louisiana. Despite formal compliance with Title 28, United States Code, Sections 1441, 1445 and 1446, the state court refused to await decision by the federal court as to the latter's jurisdiction, as that statute requires. On April 24, 1956, it enjoined the N.A.A.C.P. from engaging in any activities in Louisiana until the organization complied with La. R. S. of 1950, 12:401-409.

On November 26, 1956, the Louisiana Court of Appeals for the 1st Circuit ruled that the proceedings in the state court were a nullity since the matter had been formally removed in accordance with Title 28, United States Code, Section 1446; that by virtue of that action, the state court had no power to make any adjudication until the question of the jurisdiction of the federal court had been determined. That decision is reported at 90 So. 2d 884. Subsequent to this decision, the state took no steps in the federal court to remand the cause to the state court and made no attempt to revive the state proceedings.

At the 1958 session of the General Assembly of Louisiana, La. R. S. of 1950, 14:385-389 was enacted. This statute barred organizations "engaged in social, educational or political activities" from being affiliated with out-of-state orgnizations whose officers or board members are members of the "Communist Party, communist front or subversive organizations as cited by the House of Congress Un-American Activities Committee or the United States Attorney."

As a necessary prerequisite to engaging in activities in Louisiana, any local organization, engaged in social, educational or political activities affiliated with an out-of-state organization, was required to file annually, on or before December 31st of each year, an affidavit that none of the officers of the out-of-state organization are members of any organization cited by the Un-American Activities Committee or the United States Attorney General as communist, communist-front or subversive. Failure to file the required affidavit or the filing of a false affidavit subjects the officers and members of the local organization to penalties of a $100 fine and 30 days' imprisonment.

In November, 1958, the N.A.A.C.P. brought proceedings in the court below attacking the constitutionality of La. R. S. of 1950, 14:385-389 and 12:401-409. Jurisdiction was invoked under Title 28, United States Code, Sections 1331, 1343 and 2281-2284. Temporary and permanent injunctions were sought against the enforcement of both

statutes on the ground that they denied rights of access to the courts in violation of Article III of the federal Constitution; denied the equal protection of the laws; denied freedom of speech and freedom of association and property in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States. The state filed its answer in December of 1958.

Nonetheless, while the cause was pending and before hearing, the Attorney General on October 9, 1959, brought action against the N.A.A.C.P. in the 1st Judicial District Court of Cado Parish and secured an *ex parte* temporary restraining order barring all N.A.A.C.P. activity in the state because of its failure to comply with the above-named statutes.

On November 2, 1959, these cases were consolidated in the court below. Thereafter, a hearing was held before a specially constituted court of three judges. Evidence was introduced in the form of depositions, affidavits and documents. On February 5th an opinion was handed down in which the court declared the statutes unconstitutional and enjoined their enforcement insofar as they were applied to require the disclosure of N.A.A.C.P. members and contributors or the submission of the aforementioned affidavit. On February 27, 1960, the court entered judgment in accord with this opinion. That opinion is not reported and is appended to appellants' jurisdictional statement.

Argument

The decision of the District Court is plainly correct. The constitutional validity of La. R. S. 12:401-409, insofar as it requires the disclosure of the names and addresses of the members of the N.A.A.C.P., is controlled by the decisions of this Court. *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, and *Bates* v. *Little Rock*, 361 U. S. 516. The evidence plainly shows that the statute in question was enacted to

unmask the Ku Klux Klan. Until *Brown* v. *Board of Education*, 347 U. S. 483, this statute had fallen into disuse. With that decision the law was revived in an attempt to destroy the N.A.A.C.P. as an organization and to prevent activities and agitation in favor of desegregation.

The proceedings below disclose that the state had not proceeded against any organization other than the N.A.A.C.P.; that the climate in Louisiana was anti-N.A.A.C.P. and anti-desegregation; that some N.A.A.C.P. affiliates, after the original state court decision referred to *ante*, had filed membership lists with the Secretary of State; that N.A.A.C.P. members thereby publicly disclosed had been subjected to economic reprisals; that La. R. S. of 1950, 17:462 and 17:493 bar public employment to teachers and to others who advocate integration in the public schools; that membership in the Association had declined sharply since enforcement of these statutes and that virtually all teachers had severed connections with the organization. Moreover, there was no showing of any compelling justification to warrant validation of this deterrent to freedom of association.

These evidentiary facts bring this case squarely under the doctrine enunciated in *N.A.A.C.P.* v. *Alabama*, *supra*, and *Bates* v. *Little Rock*, *supra*. As such, the question raised has been foreclosed and, it is respectfully submitted, no substantial federal question is presented in respect to this phase of the appeal.

Act 260 of 1958, La. R. S. of 1950, 14:385-388, establishes an impossible standard. It requires local persons to take an oath regarding the affiliations and associations of out-of-state individuals—in the present instance approximately 48 members of the National Board of Directors and 20 Vice-Presidents. Obviously, an official of a local affiliate of the N.A.A.C.P. in Louisiana should not be held responsible for what some 68 out-of-state persons do or do not do.

Ignorance of the subversive character of the prohibited organizations is not excused. If it appears that an officer of the national organization belonged to an organization on the proscribed list, that is sufficient to bar the local affiliate from engaging in any activities in Louisiana. The statute is clearly invalid, *Wieman* v. *Updegraff*, 344 U. S. 183, and must fall. *DeJonge* v. *Oregon*, 299 U. S. 353.

Conclusion

It is respectfully submitted, therefore, that appellant presents no substantial federal question for the decision of this Court and that the judgment and decree of the court below should be affirmed.

Respectfully submitted,

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A. P. TUREAUD,
Counsel for Appellees

September, 1960.

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